(1999) 08 MP CK 0047

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 919 of 1991

Pankaj C. Patel and Company — APPELLANT

Vs

General Manager, District Industries Centre-cum-Member, Secretary, State Level Committee and Others — RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (2000) 120 STC 73

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : G.M. Chaphekar and C.R. Pamcholiya, for the Appellant; P. Verma, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Gohil, J.—By this writ petition under Article 226/227 of Constitution of India, the petitioner is seeking a writ of certiorari and also writ of mandamus for grant of eligibility certificate for exemption from payment of sales tax under the State and Central Sales Tax Act for the period of seven years from the date of commencement of commercial production dated April 30, 1988 as prescribed in the notification dated October 16, 1986.

2. In short, the facts of the case are that the petitioner is a partnership firm carrying on business of manufacture and sale of stone metal (gitti) manufactured from stone boulders. The petitioner holds stone quarries on lease for extracting stone boulders which are crushed into the crusher to manufacture "gitti" which are used for various purposes in building constructions.

3. The case of the petitioner is that the petitioner has set up a new industrial unit of Pipaldehla, Deorari, District Jhabua, for the manufacture of stone metal and has installed a crusher. The said unit is located in the backward district of Jhabua which is covered under category C of part II of annexure I to the Notification No.

A-3-11-86 (74) ST-V dated October 16, 1986 issued u/s 12 of the M.P. General Sales Tax Act. The petitioner made an application on September 18, 1987 in the prescribed form before the General Manager, District Industries Centre, Jhabua, for grant of provisional registration of the new industrial unit, and by order dated September 21, 1987, provisional registration was granted. The petitioner also made an application on September 26, 1987 before the Sales Tax Officer, Jhabua, for grant of provisional certificate of registration under the Madhya Pradesh General Sales Tax Act and an application was made on the same date for the grant of a permanent certificate of registration under the Central Sales Tax Act, 1956, and thereafter a provisional registration certificate under the M.P. General Sales Tax Act and a permanent registration certificate under the Central Sales Tax Act was granted.

4. The petitioner commenced the trial production of stone gitti on April 1, 1988, and thereafter made an application on April 29, 1988 before the Sales Tax Officer, Jhabua, for grant of permanent registration under the M.P. General Sales Tax Act, which was granted to him on April 29, 1988. The said registration was effective from September 26, 1987. The petitioner commenced commercial production of stone metal from April 30, 1988.

5. The submission of the petitioner is that the petitioner made an application before the General Manager, District Industries Centre, Jhabua, for grant of permanent registration which was granted to him on June 16, 1988. On August 9, 1988, the petitioner submitted an application in the prescribed form before the General Manager, District Industries Centre-cum-Member Secretary, District Level Committee, District Jhabua, for the grant of the eligibility certificate for exemption from the payment of sales tax under the M.P. General Sales Tax Act and Central Sales Tax Act in view of the Notification No. A-3-II-86(74)-ST-V dated October 16, 1986.

6. The submission of the petitioner in the petition is that by letter dated December 9, 1988, he was informed that his unit regarding issues of sales tax exemption will be inspected on December 27, 1988. The petitioner received another letter from the General Manager, District Industries Centre, Jhabua, informing that, in view of the directions of the Director of Industries dated November 30, 1988, the petitioner is not eligible for exemption from sales tax, and by letter dated October 31, 1990, the petitioner requested to reconsider his case for grant of eligibility certificate for exemption from the payment of sales tax, but the same was not considered on the ground that by notification dated October 11, 1990, the State Government made an amendment in the earlier notification dated October 16, 1986, by which the stone crushing industrial units were excluded from the benefit of exemption from payment of sales tax.

7. The further submission of the learned counsel for the petitioner is that he filed returns for all the four quarters for the period from October 23, 1987 to November 9, 1988 and disclosed the total turnover of sales amounting to Rs. 2,30,206.00 ; but the petitioner did not pay sales tax on the turnover in

anticipation of the grant of eligibility certificate for exemption. The A.S.T.O., Ward A, Jhabua, passed an assessment order on December 29, 1990 for the said period and determined the amount of sales tax on the aforesaid turnover to Rs. 27,636 at the rate of tax at 12 per cent. A set off of the tax of Rs. 4,500 has been allowed on the tax-paid purchases of diesel. Penalty of Rs. 5,500 has also been imposed u/s 17(3) of the M.P. General Sales Tax Act. Thus a total demand of Rs. 28,636 has been raised against the petitioner. The case of the petitioner is that the order dated July 13, 1989 rejecting the application for grant of eligibility certificate for exemption from payment of sales tax is fully arbitrary and illegal. His contention is that the exemption already granted by notification dated October 16, 1986 cannot be withdrawn retrospectively by another notification dated October 11, 1990.

8. Therefore, a very short question that arises for consideration in this case, is whether the notification dated October 11, 1990 has a retrospective effect or not and whether the petitioner is entitled for exemption on the basis of notification dated October 16, 1986 as he had set up his unit in backward districts and had started production w.e.f. April 30, 1988 during the period of enforcement of unamended notification dated October 16, 1986.

9. In reply the submission of the respondent is that by notification dated October 11, 1990, the Government has excluded stone crusher from the list of exempted industries and a decision was already taken by the State Level Committee on November 21, 1988 that the stone crushing units are not exempted from the sales tax, and on the basis of the decision taken by the State Level Committee, the respondents have refused to grant the eligibility certificate.

10. I have heard learned counsel for the parties, perused the record and pleadings of the parties and considered the rival contentions.

11. In short, the submission of the learned counsel Shri G.M. Chaphekar, who is appearing for the petitioner is that by notification dated October 16, 1986, the petitioner was entitled to get the exemption for a period of seven years, in case of industrial units established in any district specified in category C, Part II of annexure I. Jhabua is one of the districts falling under category C, Part II of annexure I and this notification remained in force up to October 11, 1990. By another Notification No. A-3-ll-86-ST-V(98) dated October 11, 1990, the State Government has amended the earlier notification No. A-3-ll-86(74)-ST-V dated October 16, 1986 and had withdrawn the exemption granted to the stone crushing industries.

12. Learned counsel for the petitioner in support of his aforesaid submission relied on the decision of this Court in the case of G.S. Dall and Flour Mills v. State of M.P. (1987) 20 VKN 117, in which the division Bench of this Court held that as per notification exemption was available to all the industries, subject to restrictions and conditions specified in the notifications. The notification unequivocally extended to all such industries which are set up in any of the

districts specified in Part II of the annexure and fulfilled the requisite restrictions and conditions and which have commenced production after the issue of notification.

13. According to the learned counsel for the petitioner, the aforesaid judgment of G.S. Dall and Flour Mills (1987) 20 VKN 117 has already been upheld by the Supreme Court in the case of State of Madhya Pradesh v. G.S. Dall and Flour Mills reported in [1991] 80 STC 138.

14. The petitioner cited another Full Bench decision of this Court in the case of Kher Stone Crusher v. General Manager, District Industries Centre, Jabalpur [1990] 79 STC 149 ; 1990 CIJ 136 in which it has been held by the Full Bench that the stone crushing comes within the definition of "manufacture unit" and the conversion of stone boulders is a manufacturing activity, and is eligible to claim eligibility certificate for sales tax exemption.

15. So far as the question of the applicability of the notification dated October 11, 1990 is concerned, in the notification of 1990 itself, it is nowhere stated that it will have a retrospective application. Therefore from the notification dated October 11, 1990, by which the stone crushing industries were excluded from the notification dated October 16, 1986, it can be only concluded that under the earlier notification dated October 16, 1986, stone crushing industries were not excluded, but the same were excluded after the amendment of that notification with effect from October 11, 1990. It is a general rule of law that the laws, rules and the notification are applicable from the date of their publication in the official gazette, unless otherwise they are made effective from a retrospective date. In this case, from a bare reading of the notification dated October 11, 1990, it is clear that the notification was issued on October 11, 1990, and published in the M.P. "Raja Patra Asadharan" dated October 11, 1990 at pages 2304-05 and, therefore, this notification will have prospective operation with effect from 11th day of October, 1990, and not from any other earlier date.

16. In the return filed by the respondents there is nothing about the operation of this notification dated October 11, 1990. It is also not the case of the respondents, that this notification came into force with a retrospective date. Therefore, in view of the aforesaid legal position, it is clear that by notification dated October 11, 1990, the stone crushing industry shall not be eligible for seeking exemption, but shall be eligible as per notification dated October 16, 1986, on fulfilling the other conditions.

17. It is true that the notification dated October 16, 1986 was applicable in respect of stone crushing industry established prior to October 11, 1990 for grant of exemption. The petitioner commenced commercial production with effect from April 30, 1988. Therefore, the petitioner shall be entitled to the benefit of exemption from payment of the M.P. general sales tax and Central sales tax, as the effect of notification dated October 11, 1990 is not retrospective. But such units which are set up after October 11, 1990, shall not be entitled for claiming

benefits.

18. In the result, the petition succeeds and is hereby allowed. The respondents are directed to grant eligibility certificate for exemption from payment of sales tax to the petitioner in accordance with notification dated October 16, 1986, within a period of three months from the date of this order, if the petitioner fulfils the requisite restrictions and conditions mentioned in the notification. Accordingly the order passed by the Sales Tax Officer on December 29, 1990 and the memos issued on July 13, 1989 by the General Manager, Director of Industries, Jhabua, in pursuance of memo dated November 30, 1988 of Director of Industries, Bhopal, are hereby set aside, and S.T.O. is directed to make a fresh assessment in accordance with law.

19. In view of the aforesaid directions, there shall be no order as to the costs of this petition. The amount of security, if any, be refunded to the petitioner after due verification.

